

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6384 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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DILIPBHAI RAMSAMUJ JAISWAL

Versus

STATE OF GUJARAT

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Appearance:

MS SUMAN PAHWA for Petitioner

MR KT DAVE AGP for Respondent No. 1 to 3

MRS. PJ DAWAWALA for Respondent No. 4

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CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 15/10/1999

ORAL JUDGEMENT

1. Heard the learned advocate Ms. Suman Pahwa for the petitioner, learned AGP Mr. K.T. Dave for respondent nos. 1, 2 & 3 and Mrs. P.J. Dawawala for respondent no.4.
2. The detention order dated 27.7.99 passed by respondent no.2 - the District Magistrate, Panchmahals at

Godhra against the petitioner in exercise of power conferred vide section 3(2) of the Prevention of Black Marketing & Maintenance of Supply of Essential Commodities Act, 1980 (PBM - Act for short) is challenged in the present petition under Article 226 of the Constitution of India.

3. The grounds of detention supplied to the petitioner and produced on record at Annexure : B inter alia indicate that on 23.7.99, Mamlatdar, Halol and the staff members of Civil Supply stopped a truck on Halol-Pavagadh Road and on inquiry, found that 110 bags of wheat were being transported from Quanth to Kalol (District : Panchmahals). That on further inquiry, it was found that the wheat contained in the said 110 bags seized were meant for public distribution system through Fair Price Shop of Taluka Quanth District Baroda. However, the petitioner-detenu had managed to obtain the same illegally and was transporting the same to sell in open market with an intent to make profit by black marketing. On the basis of the said fact, a criminal case under section 7 of the Essential Commodities Act, 1955 read with Condition No. 6,8 & 9 of Gujarat Essential Commodities & Regulation Order, 1977 was filed. That the detaining authority having considered the facts of the said criminal case has come to a conclusion that the petitioner-detenu is likely to get bail in the said offence and enforcement of general laws being insufficient to prevent the petitioner from repeating such activity which is likely to prejudicially affect the supply of essential commodities, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds.

5. It has been contended at the Bar that the petitioner has made a representation dated 11.8.99 to respondent no.1 - State of Gujarat and respondent no.4 Union of India by forwarding the same through Regd. Post A.D. According to the petitioner, neither of the authorities have considered the said representation and as such the fundamental right of the petitioner guaranteed under Article 22(5) of the Constitution of India having been breached, the continued detention of the petitioner has become illegal and the impugned order deserves to be quashed and set aside.

6. Learned AGP Mr. K.T.Dave relying on the affidavit filed by one A.K. Rakesh - respondent no.2, dated 30th September, 1999 and another affidavit sworn by

one P.R. Shukla, Deputy Secretary to the Govt. of Gujarat, dated 7th October, 1999 has urged that the said representation was received in the office of Chitnis of Collector, Panchmahals. That it being not the branch dealing with such representation, it was forwarded to respondent no.1 - State Government which was received by the concerned authority on 21.8.99. That thereafter the same was processed and having not found acceptable, it was rejected. That the detinue was intimated vide communication dated 30th August, 1999. According to learned AGP Mr. K.T. Dave, the delay from 16.8.99 to 21.8.99 can not be said to be unreasonable or inordinate delay as departmental procedure is required to be followed to process the said representation as per practice prevalent in the office of the respondent no.1 and as such, the said delay cannot be said to be fatal to the validity of the impugned order.

7. The next contention urged on behalf of the petitioner is that the second copy of the said representation dated 11.8.99 was also forwarded to respondent no.4. That though no affidavit-in-reply has been filed on behalf of respondent no. 4, the facts stated in the affidavit of Deputy Secretary to the Govt. of Gujarat dated 7.10.99 more particularly in para 4, show that the said representation was received by the Department of Economic Advisor & Consumer Affairs, New Delhi. Vide telegram dated 17.8.99, parawise remarks from the said branch of Food & Civil Supply, State of Gujarat were called for. That the file of the said representation was prepared and was put up by the said branch on 23.8.99 and thereafter after following the due process, it was forwarded to the Department of Economic Advisor & Consumer Affairs, New Delhi on 29.8.99.

8. The above-stated sequence of facts particularly processing the representation made by the petitioner to the concerned department of respondent no.4 - Central Government clearly disclose that the said representation was treated in a routine manner and no due consideration was given to it as mandated under Article 22(5) of the Constitution of India. In the matter of R. Paulsamy v. Union of India & anr. reported vide (1999) 4 SCC P. 415, the Apex Court having referred to the observations made in the earlier matter of Venmathi Selvam vs. State of T.N. reported vide (1998) 5 SCC 510 : 1998 SCC (Cri) 1359 has observed that the order for calling for comments of the sponsoring authority was passed by some authority who is not empowered by the orders of the Minister and then, the process followed by such officer amounts to dealing with the representation in routine manner and

that there is non application of mind by the competent officer. Under the circumstances, the resultant delay would be uncalled for which would render the detention order and continued detention illegal.

9. In the instant case, in the absence of any material produced on record on behalf respondent no. 4, there is nothing on record to infer whether calling for of parawise remarks by telegram dated 11.8.99 in respect to the material of the impugned order passed by respondent no.2 on behalf of respondent no.4 was made under the instruction of competent and/or authorized officer. Furthermore, as per the provisions of the Act and the rules followed by way of practice, the State Government is under the obligation to forward all relevant material to Central Government after confirmation of the detention order so that the representation made on behalf of the detainee could be dealt with appropriately. In the instant case, in the absence of any material, it could hardly be said that the representation dated 11.8.99 made on behalf of the petitioner-detenu was properly dealt with by the competent authority on behalf of respondent no.4. Under the circumstances, I am constrained to hold that the delay in considering the representation made on behalf of the petitioner by the respondent no.4 being inordinate has rendered the continued detention of the petitioner illegal and the order deserves to be quashed and set aside.

10. On the basis of the foregoing discussion, the impugned order dated 27.7.99 passed by respondent no.2 against the petitioner is hereby quashed and set aside and the petitioner Dilipbhai Ramsamuj Jaiswal is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent made absolute.

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